COMMERCIAL SURFACE

REQUEST FOR AUTHORISATION OF VARIATION TO A TRANSACTION

SUBJECT	New Bus for London roll out – Additional 600 vehicles	**Date** 21/03/2013
Originating Department: London Bus Services Limited		

Supplier Name:	Wrightbus Limited
Original Transaction Value:	£ 11,061,794 (Development and 8 pre-production buses)
Original Approval given by:	TfL Board
Value of this Variation	**£212,700,000**
New Proposed Total Value	£223,761,794

1 Summary

This paper seeks the approval of a variation to supply 600 New Bus for London (NBfL) vehicles.

2 Background

2.1. The purchase of 600 NBfL vehicles for delivery into passenger service by the end of April 2016 was approved by the TfL Board on 20 September 2012. The paper presented to the Board is attached as Appendix 1.

2.2. A Memorandum of Understanding (MOU) setting out the key points of the agreement to supply the buses was signed with Wrightbus in December 2012 and is attached as Appendix 2.

2.3. In mid / late 2012 Wrightbus commenced manufacture of vehicles at risk to support achievement of LBSL's anticipated delivery schedule. By early 2013 this had created cash flow pressures for Wrightbus and following representations from Wrightbus the Managing Director, Surface Transport authorised acquisition and payment for 8 completed production vehicles. The arrangements covering these 8 vehicles are covered by a formal agreement and they are included and fully accounted for in the proposed variation.

2.4. The proposed variation reflects the agreements in the MOU and subsequent discussions in relation to termination rights and security for advance payments. The details of these are set out below.

3 Proposed Variation

3.1. This variation implements the decision to procure 600 New Bus for London vehicles and provides for a number of contract changes.

3.2. The contract entered into by London Bus Services Limited (LBSL) with Wrightbus Limited in January 2010 provided for further orders of production vehicles to be made by TfL or its operators. The scale of

the order being placed, the proposed payment mechanism and experience of the buses already delivered has meant that it is appropriate to place the new order by way of a variation to the existing contract, rather than simply issuing an order under it.

3.3. The proposed variation incorporates new inspection and delivery schedules and updates to various technical issues and improvements, including, for example, a requirement for improved in-service monitoring targets for operational fuel consumption and a defined build specification.

4 Key Details

4.1. In giving its approval, the Board delegated to the Commissioner, the Managing Director Surface Transport and General Counsel the authority to settle the final terms for the purchase and authorise execution of the necessary documentation. The Board specifically authorised those officers to settle the following terms:

4.2. Number of vehicles.
The basic number of buses included in this order is 600; this total can be reduced or increased by LBSL by up to 5 buses at any time with nine months' notice. LBSL can also reduce the order to 250 or 450 buses and the contract provides a process for that, together with compensation payable, described further below. These are the only opportunities for amendment to the number of buses ordered without a formal variation (and associated costs); the right included in the original contract for LBSL to terminate at any point is suspended for the duration of this order;

4.3. Timing of Orders.
The contract variation contains the manufacturer's production programme and, while regard must be had to it, the primary driver in settling the time for delivery will be based on the timetable for route conversion which will be for LBSL to advise. Based on the Wrightbus production programme, the 250th bus will be delivered in June 2014. There are ancillary provisions to protect the manufacturer against having to retain an unduly large stock of completed vehicles for which it has not been paid.

4.4. Model of Ownership.
It was described to the Board that the nature and circumstances of this purchase mean that a direct purchase by LBSL of these buses will offer better value for money than purchase by bus operators; nothing has changed to alter that recommendation and the contract variation is drafted on the basis that LBSL will own the vehicles and they will be leased to operators.

4.5. Price.
The price of each bus is £354,500. Actual payments under the proposed variation are:

4.5.1. £2,836,000 for the 8 production vehicles already paid for.

4.5.2. £21,447,250 advance payment immediately following signing of variation. This is recovered over the next 242 buses through a 25% reduction in the bus price. NB The advance payment was agreed at £22,156,250 in the MOU but has been reduced by £709,000 to reflect the recovery that would have arisen from the payment made for the 8 production vehicles

4.5.3. £212,700 per vehicle ex-works followed by £53,175 per vehicle on delivery and acceptance as ready for service in London for the next 242 buses. This represents 75% of the bus price with the balance of 25% contributing to recovery of the advance payment.

4.5.4. £283,600 per vehicle ex-works followed by £70,900 per vehicle on delivery and acceptance as ready for service in London for all remaining buses. This represents 100% of the bus price as the advance payment will have been recovered over the first 250 vehicles.

4.5.5. LBSL's protections in respect of the advance payment are described in section 5 below.

4.6. The fixed price contract provides for the increased cost of implementing Euro 6 from 1 January 2014 at the latest, meaning that a maximum of 98 buses will be supplied to Euro 5 standards. If, for any reason, the implementation of Euro 6 is delayed, the price of each affected bus is reduced by £6,500.

5 Key Contractual Changes

Key changes to the existing contract terms in the proposed contract variation for this order of 600 buses are as follows:

5.1. Security for Advance Payment.

5.1.1. As noted above, the proposed variation provides for an advance payment of some £21million. While Wrightbus have offered an "equitable charge" over materials, work in progress and completed buses which will be less than the amount advanced, that type of charge is not registrable at Companies House and will not be recognised by an insolvency practitioner if Wrightbus become insolvent, so has little practical effect.

5.1.2. Wrightbus have also offered a floating charge over the same assets which becomes available only: (a) when they are already insolvent (in which case, it cannot be registered at Companies House and has little practical effect); or (b) where they are in material breach which cannot be resolved under the contractual processes, in which case, LBSL would have to have the charge executed, register it and seek to exercise the power of sale it

contains over the assets. It is helpful that Wrightbus' bankers, Bank of Ireland, have confirmed that, if the floating charge is made, they will enter into a "deed of priority" committing them not to seek to have their own interests take priority in the event of Wrightbus' insolvency.

5.1.3. Wrightbus also gives title to LBSL in those assets; while this is less reliable than a registrable charge, it does give LBSL some leverage to recover in the event that Wrightbus become insolvent. It should be noted that Wrightbus cannot segregate parts and materials so while NBfL parts can be identified through the Bill of Materials conventional identification of parts, materials, work in progress etc. may present a practical difficulty.

5.1.4. The amount of security offered by the charge and title transfer reduces as LBSL recovers value over the first 250 buses.

5.1.5. LBSL will also have the benefit of a guarantee from Wrightbus' parent company, The Wrights Group Limited. As with any such guarantee, its value is limited to the value of the parent company's assets. In the case of The Wrights Group Limited its main asset is Wrightbus Limited, so value of the additional protection offered by the guarantee is limited.

5.2. Compensation.

5.2.1. To secure Wrightbus' agreement to LBSL's right to cancel the order at the 250 and 450 bus points, the proposed contract variation provides for compensation to be paid if those rights are exercised. That compensation is set at a level that is considered reasonable and below that which would be payable under conventional termination for convenience provisions. Wrightbus will have a duty to mitigate its losses and the maximum compensation payable at the 250 and 450 bus break points is £9,047,500 and £5,127,300 respectively.

5.2.2. Advance notice of six months is required for LBSL to exercise the 250 and 450 bus break points, being December 2013 and September 2014 respectively.

5.3. Termination for Convenience.

As noted above, the general termination for convenience provision is suspended while this order is fulfilled. In the event that LBSL did have a need to cancel the order, any recovery against the full price of the order would have to be negotiated separately.

5.4. Liquidated Damages.

Liquidated damages provisions remain in the contract but have been refined to provide for an increased amount for buses that are intended

to have a second crew member and a separate, smaller, amount for buses that are intended for driver-only operation.

5.5. Innovation and product development.
Provision is made for LBSL and Wrightbus to share gains from initiatives to improve the design and manufacture of the buses; this is set against a periodic benchmarking exercise so that Wrightbus do not have to share gains that derive from improvements in their own general efficiency.

5.6. Pricing Updates.
The pricing and price review provisions in the contract are updated in the variation.

6 Impact on Funds

The budget was approved at TfL Board on 20 September 2012.
WBS code: SP.2475.001

7 Recommendation

It is recommended that the contract variation for an additional 600 NBfL vehicles as authorised by the TfL Board, anddetailed in the MOU and this document and as set out in the Contract Variation document is approved as permitted in the approvals given by the TfL Board and any of the directors of London Bus Services Limited be authorised to execute the necessary documentation.

8 Next Steps

Following approval of the recommendation:

8.1 The Variation Agreement and restated contract document will be sealed and then signed by Leon Daniels on behalf of LBSL and [redacted] on behalf of Wrightbus.
8.2 Shopping carts to authorise the purchase of vehicles and advance payment will be created in SAP for approval by the Commissioner.
8.3 The project team will create the Purchase Orders which will be released by Surface Commercial team.

9 Signature and Approval

Recommended By: (Signature indicates agreement unless comments are provided)

Name	Signature	Date	Title
Mike Weston			Operations Director

Comments By: Modal Procurement (Signature indicates agreement unless comments are provided)

Name	Signature	Date	Title
Kevin Smith			Head of Surface Commercial

Approved By (*Appropriate Delegated Officer with Financial Authority*)

Name	Signature	Date	Title
David Hendry			Director of Finance Surface Transport
Steve Allen			Managing Director Finance
Leon Daniels			Managing Director Surface Transport
Sir Peter Hendy CBE			Commissioner -TfL

Appendix 1 – Board Papers

Board

Date: **20 September 2012**

Item 8: **New Bus for London Roll Out**

This paper will be considered in public

1 Summary

1.1 This paper outlines proposals to purchase 600 New Bus for London (NBfL) buses to be delivered into passenger service by the end of April 2016. The total fleet size will be 608 taking into account the eight initial buses already in service.

1.2 The current model of ownership, with buses in London owned or leased by the bus operating companies, is not the most advantageous in the case of NBfL. Due to its uniqueness there is currently no market for an off balance sheet leasing structure for NBfL buses, they will therefore be considered on balance sheet initially reducing TfL's borrowing capacity and cash. The most cost effective approach is for TfL to purchase and own these buses direct taking advantage of its preferential cost of capital in this case.

1.3 A paper is included on Part 2 of the agenda, which contains exempt supplemental information. The information is exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the business affairs of TfL. Any discussion of that exempt information must take place after the press and public have been excluded from this meeting.

2 Recommendations

2.1 **The Board is requested to:**

(a) note the paper;

(b) approve the procurement of up to 600 buses to the New Bus for London design as described in this paper provided that the cost of such vehicles does not exceed the maximum sum stated in the paper included on Part 2 of the agenda on this matter;

(c) delegate to the TfL Officers and the Subsidiaries (as described in paragraph 2.2 below) authority to:

(i) settle the timing of any orders for new buses and the number of buses per order;

(ii) settle the model of ownership of any buses acquired pursuant to the approval given in paragraph 2.1(b) above, whether by direct ownership, leasehold or by operator acquisition, according to which offers best value for money to Transport for London; and

(iii) finalise the price of the buses to be acquired, subject to the maximum cost given in paragraph 2.1 (b) above;

(d) **authorise the agreement and execution (whether by deed or otherwise on behalf of TfL or any Subsidiary (as appropriate) any documentation to be entered into in connection with the completion and implementation of the orders for buses made pursuant to the approval given in paragraph 2.1(b) above (the Orders) and any of the matters referred to in them (including, without limitation, all agreements, deeds, guarantees, indemnities, announcements, notices, contracts, certificates, variations, letters or other documents); and**

(e) authorise TfL Officers and Subsidiaries to do all such other things as they consider necessary or desirable to facilitate the execution and implementation of the Orders and the matters referred to in them.

2.2 The following Officers and Subsidiaries shall have delegated authority:

(a) TfL Officers: the Commissioner, Managing Director Finance, Managing Director Surface Transport, General Counsel; and

(b) Subsidiaries: Subsidiaries of TfL including Transport Trading Limited and any other subsidiary (whether existing presently or to be formed) of Transport Trading Limited and any of the directors of the relevant company shall be authorised to act for and on behalf of that company.

3 Background

3.1 The contract for the initial prototypes, with provision for the first 1,000 vehicles, was awarded to Wrightbus Limited on 23 December 2009, following a competitive process.

3.2 Following his re-election in May 2012, the Mayor has asked TfL to progress delivering 600 NBfLs by April 2016.

3.3 The first of an initial tranche of buses entered passenger service on 27 February 2012 on route 38 operated by Arriva. All eight buses are now in service, the last having been delivered on 11 July 2012. A number of technical improvements to the buses have already been identified and implemented, including to the battery management and upper deck passenger saloon air cooling systems.

4 Deployment and Operation

4.1 The deployment plan assumes a total fleet size of 608 buses (of which 600 are the subject of this paper) delivered by the end of April 2016. A single variant type is to be ordered, capable of operating either with or without a conductor. With an order placed by the end of September 2012, it is anticipated that the first route in central London, requiring approximately 30 vehicles, could be converted by the end of April 2013, and the second route by the end of August 2013, with a total of 93 vehicles being delivered by the end of that year. The rate of production would achieve approximately 208 vehicles delivered in calendar year 2014, 247 in 2015 and 52 in 2016.

4.2 While no decision has yet been taken on which routes will be converted to NBfL, it is expected that the buses will be either introduced at the point of contract renewal for a route or, where a route is not at a contract renewal point, through negotiation with the current operators, thus reducing the requirement for new conventional buses.

4.3 The service specification for the operation of NBfL (for example frequency of operation and hours of service) will be determined by TfL and be based on the characteristics of each route. In addition, TfL will specify to the operators the hours of operation with a conductor in open platform mode and the mix of conductor and driver-only operation as appropriate to a particular route.

4.4 The employment and training of the conductors will be the responsibility of the bus operators, although the costs will be borne by TfL through the route contracts.

5 Model of Ownership

5.1 NBfL is a unique vehicle, which, at the proposed volume of vehicles, may be purchased only from Wrightbus and is intended to be used in London for its full economic life. Because of these factors, the value of the NBfL fleet will have to be included as an asset on TfL's balance sheet regardless of whether it is purchased by operating companies or TfL. As such it will score against TfL's borrowing capacity under either option. This treatment of assets does not apply to conventional buses as they can be acquired from a number of different suppliers and can be deployed anywhere on an operator's national fleet. The uniqueness of NBfL will also disfavour the financial deal that operating companies can obtain with the leasing companies.

5.2 Therefore, the recommended option is for TfL to purchase the buses directly and to supply them to the bus operating companies at a notional lease, rather than for the current model of the bus companies having beneficial ownership of the vehicles. The leases would enable TfL to move the buses between operators during their life as route contracts change and would include clauses to ensure the buses are maintained to the required standard for them to be moved between operators without issue. Maintenance of the buses will be the responsibility of the relevant operator but it is expected to be sub-contracted by them to Wrightbus; the contract with Wrightbus provides for this to ensure cost certainty to TfL.

6 Commercial

6.1 In order to meet the production timescale of April 2016 for the delivery of 600 buses, Wrightbus has indicated that a commitment must be placed no later than the end of September 2012. This paper seeks authority for a maximum figure which allows the final procurement price to be resolved and an order or orders to be placed.

6.2 Preliminary commercial discussions with Wrightbus have commenced, with particular regard to the production timescales, economies of scale and the establishment of the supply chain. TfL's discussions with Wrightbus will ensure that the most economically advantageous outcome is obtained and the size of any initial order will maximise these financial benefits.

6.3 TfL will continue to monitor the in-service performance of the initial fleet and this feedback will inform its discussions with Wrightbus regarding the roll out order. TfL has set up a package of rigorous acceptance criteria which will form part of the overall technical evaluation of the initial fleet and anticipate a formal review of this to be concluded by September 2012, although modifications and enhancements will continue into 2013.

6.4 An 'open book' approach to supply chain and labour and materials costs has been accepted by Wrightbus and TfL will be analysing these as part of the process.

6.5 The decision on the strategy for the placement of any orders will depend on the outcome of the detailed discussions.

List of appendices to this report:
A paper on Part 2 of the agenda contains exempt supplemental information.

List of Background Papers:

None

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Board

Date: **20 September 2012**

Item 16: **New Bus for London Roll Out**

This paper will be considered in private.

Subject to the decision of the Board, this paper is exempt and is therefore not for publication to the public or press by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the business affairs of TfL.

2 Summary

1.1 This paper contains supplementary information to the New Bus for London Roll Out paper being considered on Part 1 of the agenda.

1.2 The maximum costs for which procurement authority is sought under the paper being considered on Part 1 of the agenda is £224m.

3 Financial Implications

3.1 The lack of an off balance sheet leasing structure results in an adverse cashflow impact against the business plan. Based on the deployment profile noted in paragraph 4.1 of the related paper on Part 1 of the agenda and moving to direct TfL purchase the adverse cashflow impact will peak at £156m in 2015/16 before reversing in 2020. Over the useful life of the vehicle fleet, through to 2031, the saving against operator ownership is calculated at £69m, with a net present value saving of £37m.

3.2 The procurement authority requested in this paper is £224m, being £220m for the buses themselves and £4m for specific additional new equipment provided by TfL and unique to this bus type, such as additional iBus screens and ticket readers. The £220m provides a base provision of £213m to purchase 600 buses with a contingency of £7m to cover any specification changes following the operational trials of the prototypes. These total costs will be fully provided in the revised Business Plan to be discussed in a Board briefing meeting on 25 September 2012.

3.3 The contract with Wrightbus, which was subject to full public procurement, covers both the design and development of the initial prototype vehicles plus the manufacture of the first 1,000 buses. The original contract contained unit prices for production buses, these have, however, been subject to variation to reflect changes that have emerged through the design process. Discussions are currently taking place with Wrightbus to secure the best available price for an initial order which will be sized to ensure that Wrightbus are able to secure and pass back to TfL economies of scale and production efficiencies from the

supply chain. The process will also involve a full open book review of the bill of materials and build efficiency forecasts in terms of labour hours employed.

3.4 The unit price used in the calculation of £213m is prior to detailed negotiations with Wrightbus and is considered a realistic case given proposals which been discussed so far. The £213m also provides for inflation until 2017 when the last batch of vehicles approved under this authority would be delivered.

List of appendices to this report:

None

List of Background Papers:

None

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Appendix 2 – Memorandum of Understanding: New Bus for London

This memorandum records the outcome of a meeting between London Bus Services Limited and Wrightbus Limited on 28th September, 2012 at the premises of Wrightbus Limited and subsequent discussions.

1. Pursuant to Transport for London (TfL) Board approval obtained on 20th September, 2012 London Bus Services Limited (LBSL) wishes to acquire approximately 600 vehicles (the Vehicles) to the design of the "New Bus for London" (NBfL) through a variation to Contract Number 4600002369 for the Design and Supply and Maintenance of Double Decker Bus vehicles (the Contract), between LBSL and Wrightbus Limited (Wrightbus) and issue of a Purchase Order.
2. Wrightbus is willing and able to supply 600 vehicles to the design of the NBfL through a variation to the Contract and Purchase Order from LBSL.
3. It is agreed that certain terms of the Contract need to be amended to take account of changing circumstances and reflect this proposed order.
4. This memorandum sets out the principal terms settled to date for the supply of the Vehicles and identifies the further activities required to enable a formal variation to the Contract and Purchase Order to be issued.
5. LBSL intends to issue a single Variation to the Contract and a Purchase Order(s) that will provide for those items that are settled in this memorandum and for those items that are identified to be settled at a later date as described in this memorandum. The Variation will be issued when all matters have been satisfactorily addressed.
6. The parties agree to act in good faith and diligently pursue all matters to enable completion of a variation to the Contract and Purchase Order in a timely manner.
7. The parties agree to act reasonably and co-operate in good faith to secure the successful conversion of the routes notified by LBSL to operation by the Vehicles.
8. For the avoidance of doubt the terms of the Contract shall apply unless specifically varied in accordance with its terms.
9. Headings used within this memorandum are for convenience only and shall not be used to construe the meaning of any agreement.

Quantity Price, Payment and Delivery

10. The Purchase Order Quantity will be 600 vehicles subject to adjustment at LBSL's discretion within a band of 595 to 605 to accommodate LBSL's route conversion programme.
11. An increase in Quantity up to 605 inclusive will not give either party a right to amend the price per vehicle.
12. A reduction in Quantity to 595 inclusive will give Wrightbus the right to payment to reflect compensation for lost contribution to overhead and profit etc, cancellation fees incurred from suppliers, and payment for parts that have been purchased but cannot be cancelled, used in production or elsewhere such as in the after market. The maximum termination cost will be £1,500,000

and the minimum £360,000. All costs claimed will be on the basis of full transparency and an "open book" cost exercise by both parties. LBSL will give 9 months notice of the final quantity required.

13. In addition to its termination rights within the Contract LBSL shall be entitled to reduce the quantity ordered to 250 vehicles or 450 vehicles at any time by giving written notice to Wrightbus a minimum of 6 months notice prior to delivery of the 250th or 450th Vehicle.

14. The price of each vehicle shall be £354,500 fixed for the full quantity for the agreed specification including all costs associated with conversion to Euro 6 compliance with effect from the 98th vehicle delivered. Earlier conversion will not entitle Wrightbus to additional payment unless agreed in writing in advance by LBSL by way of a Contract Change Note. For each vehicle from number 98 onwards that is not Euro 6 Wrightbus will reduce the invoice cost of the vehicle by £6,500.

15. For the avoidance of doubt Wrightbus shall not be entitled to any increase in price arising from any cause (including but not limited to changes in material prices, labour rates, financing costs, obsolescence, technical change or non-availability of materials or parts) except agreed changes in specification requested by LBSL by way of a Contract Change Note. In relation to changes in law clause 4.6 in Contract Number 4600002369 shall remain in force.

16. Payment will be:

    For the first 250 vehicles:
    £16,000,000.00 as an advanced payment following signature of the Variation to the Contract by Wrightbus and LBSL to be paid 30 days from receipt of a correctly prepared invoice at LBSL.
    £6,156,250 as a further advanced payment to be received by the end of January 2013 subject to receipt of an invoice at LBSL by end of December 2012.

    £212,700.00 per vehicle (60% of the vehicle price) will be invoiced Ex Works on a vehicle by vehicle basis.
    £53,175.00 per vehicle (15% of vehicle price) will be invoiced following delivery and acceptance ready for service in London.

    NB Wrightbus to be responsible or all shipping, insurance and delivery costs to the nominated Production Vehicle Site in London in accordance with clause 15 of the Contract.
    For vehicles from no. 251:
    £283,600 (80% of the vehicle price) per vehicle ex works ready for delivery
    £70,900 (20% of the vehicle price) per vehicle delivered and accepted ready for service in London. NB Wrightbus to be responsible for all shipping, insurance and delivery costs to the nominated PV Site in London in accordance with clause 15 of the Contract.

17. Wrightbus will provide security to LBSL in respect of the advance payments through:

    17.1. Provision of a Parent Company Guarantee in a form normally used by LBSL, such Parent Company Guarantee to terminate on receipt and acceptance by LBSL of the 250th Vehicle.

    17.2. Wrightbus will provide a written security against any completed vehicles and all raw materials and work in progress which form part of the execution of this contract. This will be an equitable agreement allowing TfL to register a pledge or lien on the above mentioned items at a later date, up to the acceptance of the 250th vehicle.

18. In the event that LBSL reduces the quantity ordered to either 250 or 450 vehicles Wrightbus shall be entitled to compensation payments based upon a fixed Sum plus a variable amount:

    Fixed Sum (a) + Variable Amount (b) = Total Compensation.

    18.1. Fixed Sum (a). The difference between the discounted price for the large single order of 600 and a price reflecting the lower volume actually required i.e.

        18.1.1. If 250 vehicles are ordered compensation of £13,150 per vehicle delivered = £3,287,500.

        18.1.2. If 450 vehicles are ordered compensation of £4,994 per vehicle delivered = £2,247,300

    18.2. Variable Amount (b). An amount to compensate Wrightbus for the cost of materials received or commitments that Wrightbus have entered into on the basis of the 600 vehicle order which are returned to supplier with a credit of less than purchase cost, cannot be returned, or cannot be used for other purposes. Wrightbus shall use all reasonable endeavours to mitigate the cost of such termination to LBSL and comply with any reasonable request of LBSL regarding disposal / termination arrangements. All costs claimed will be on the basis of full transparency and an "open book" cost exercise by both parties.

    18.3. The worst case scenario is that Wrightbus, after a 6 month notice of a reduced order, have 1 month raw material which cannot be used on other products or used in the after sales market. In this scenario the maximum variable amount required would be:
    £5,760,000 in total if the order is reduced to 250
    £2,880,000 in total if the order is reduced to 450.

19. The Production Programme shall be as shown in document [*reference*], Wrightbus expressly give consent to this Production Programme and delivery arrangements described below as required by Clause 7.4 of the Contract.

20. The Production Programme as shown in document [*reference*] supersedes the requirements of Clauses 2.1 and 2.2 of Schedule 6 of the Contract. The Production Programme may be updated during the course of production but an update shall not be valid unless and until it has been agreed and authorised by a signed CCN.

21. From time to time LBSL will issue Instructions for delivery of the Vehicles as required for conversion of routes to operation by NBfL Vehicles. Such Instructions will specify the start date for operation of the route with NBfL (Start Date), the number of Vehicles required, the Production Vehicle Delivery Site in London (PV Site), the earliest date that vehicles may be delivered to the PV Site, and the date for all required Vehicles to be delivered (Target Date). Quantities and delivery dates will be so arranged that the quantity required is within the total quantity to be produced in accordance with the current Production Programme. LBSL will take account of the current Production Programme in arranging its route conversions to assist Wrightbus in managing the stock of vehicles held at Wrightbus. LBSL shall not be obliged to accept delivery of Vehicles to the PV Site before the earliest delivery date specified in the instruction.

22. If Wrightbus become aware that the Target Date is unlikely to be achieved or will not be achieved then at the earliest opportunity Wrightbus shall contact the Company's Project Manager to discuss the consequences and provide an action plan to enable conversion of the route at an appropriate time taking account of the operational characteristics of the route and contractual position between LBSL and the route operator. In particular if notified at least 12 weeks before the Target Date LBSL will use its reasonable endeavours to delay the Start Date.

23. Liquidated Damages shall be payable in the event that Wrightbus fails to deliver the required number of Vehicles to the PV Site on or before the Target Date and has not, in LBSL's opinion, rectified this sufficiently to support successful conversion of the route on the Start Date and the Start Date is therefore not achieved. In such cases the actual date that a route begins operation with NBfL Vehicles shall be the Commencement Date. LBSL will convert routes to operation by NBfL Vehicles as close to the Start Date as reasonably practicable taking account of customer service, contractual and operational considerations. For the avoidance of doubt a route may begin operation with NBfL Vehicles before the full number of Vehicles required to meet the PVR is available.

24. Liquidated damages shall be payable at the rates of:

    24.1. £1,714 per week of delay or pro-rata for part thereof per Vehicle subject to a maximum of £20,568 per Vehicle for routes specified as crew operated.

    24.2. £520 per week of delay or pro-rata for part thereof per Vehicle subject to a maximum of £6,240 per Vehicle for routes specified as one person operated.

25. Liquidated Damages shall be calculated on:

    25.1. If the commencement date is not the same as the start date the Liquidated Damages will be calculated based on the total number of vehicles required to be delivered by the Start Date for the period between the start date and the Commencement date,

    25.2. Liquidated Damages will also be payable for any vehicle not delivered at the Commencement Date until such time as it is delivered.

26. In the event of a key component not being available due to a supplier business failure then Wrightbus will be required to propose a revised Production Programme and revised Target Date and Start Date for any instructions issued in accordance with paragraph 20 where delivery has not been completed. The definition of a key component is a component of which the replacement of would require re-homologation and / or testing of the vehicle to enable its registration with the regulatory requirement of bus certification. Changes to the Production Programme, Target Date(s) and Start Date(s) shall not be valid unless and until it has been agreed and authorised by a signed CCN. It will be the responsibility of Wrightbus to source a suitable alternative supplier and component and mitigate the impact to the Production Programme and agreed delivery dates. Wrightbus must be able to demonstrate that the appropriate steps have been taken to protect themselves and LBSL from such an occurrence by monitoring their suppliers and making the necessary provision to hold adequate stock levels.

27. The provisions of clause 10 of Contract Number 4600002369 shall remain in force.

28. Wrightbus shall ensure that at all times it complies with the regulatory requirements for bus certification in the UK. In relation to changes in law clause 4.6 in Contract Number 4600002369 shall remain in force.

29. Wrightbus will submit an updated Schedule 4 of the Contract to LBSL by 30/11/12 for incorporation in the variation. This will include completion of the items shown as to be confirmed. This updated schedule will be the subject of further discussion and agreement.

30. It is acknowledged that the price per vehicle is fixed without any indexation of price as detailed in this memorandum and therefore the Price Review Board as described in clause 17.13 shall not apply to the Purchase Order for 600 Vehicles and operation of the Price Review Board will be suspended in relation to this order for 600 vehicles until further notice.

Contract Administration

31. It is agreed that the variation to the Contract will not be subject to the requirements of Schedule 12 (submission of Proposed Change Paper and PCP response).

32. The Contractors recipient for notices and documents for the purposes of Clause 42 of the Contract shall be:

[redacted]
Wrightbus Limited
Galgorm Industrial Estate
Fenaghy Road
Galgorm
Ballymena
County Antrim
BT42 1PY
email: [redacted]@wright-bus.com

33. The "Contractors Representative" shall be
[redacted]
Wrightbus Limited
Galgorm Industrial Estate
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Galgorm
Ballymena
County Antrim
BT42 1PY
email: [redacted]@wright-bus.com

34. References to the Head of Procurement shall also include the Head of Commercial.

35. The parties agree that:

35.1. Clause 32.2.1.3 of the contract is to be amended to increase the employer's liability insurance to £10m.

35.2. : Wrightbus confirm that the arrangements in relation to Declaration of Financial Loss Extension as described in Clause 32.2.2 of the Contract have been made.

35.3. Schedule 5 of the Contract: List of Vehicle Operators will be updated by LBSL as part of the Variation to the Contract.

35.4. Any update to Schedule 10: Workplace Harassment Policy will be provided by LBSL as part of the Variation to the Contract.

36. The role of the TfL Design Consultant will be incorporated into the Contract. It is noted that the Design Consultant does not have authority to approve Contract Change Notes, design changes or incur costs on behalf of LBSL.

Technical Issues

37. A survey / inspection of the 8 prototype vehicles delivered pursuant to the Contract will be completed jointly by LBSL and Wrightbus w/c 8/10/12 and a comprehensive action list to address all specification and performance issues will be compiled by Wrightbus for agreement by LBSL by 30/11/12. Payment of the Milestones 6B and 10 in the Contract will be linked to successful completion of the actions.

38. The arrangements and details for the supply of performance information as required by clause 20.7 of the contract will be discussed and agreed between the parties and confirmed in writing by LBSL by 30/11/12.

39. Wrightbus shall submit the Final vehicle Designs no later than 30/11/12.

40. It is acknowledged that operational performance of NBfL is very important to LBSL and it is appropriate that some operational performance targets are set in the Contract. These targets should include:
Vehicle Availability for duty
Fuel Economy
Performance of Air Conditioning
Series failure rates

Maintenance

41. Wrightbus will provide an updated proposal for maintenance of the Vehicles to LBS by 30/11/12. This proposal will reflect the agreed specification for the Vehicles and will clearly explain any changes from the maintenance schedule and pricing in the Contract (Schedules 4 and 14).

Supply Chain

42. Wrightbus acknowledge that LBSL must be satisfied that the Production Schedule is achievable and will ensure that:

    42.1. the supply chain risks have been identified and appropriate arrangements are in place to ensure continuity of supply and that this is demonstrated to LBSL

    42.2. the status of deliveries of materials or parts that are on the critical path to achieve on time delivery are included in the agenda and detailed by Wrightbus at progress meetings as required by the Contract..

Innovation and Product Development

43. In the event of a change to the Contract that results in change to the price of the Vehicles such change will be implemented through a Contract Change Note and Wrightbus will demonstrate to LBSL that the adjustment is fair and equitable by reference to::

    43.1. Relevant priced Wrightbus bill of materials for manufacture of Vehicles.

    43.2. Relevant labour hours and costs for manufacture of Vehicles

    43.3. Wrightbus level of overhead and profit and other factors that contribute to the total price per Vehicle.

    Wrightbus undertake to make a copy of the above information for the production of the 25th, 100th and 250th vehicle produced and to seal these in the presence of the Company Project Manager and hold in secure and unopened at Wrightbus until required. On agreement of a change Wrightbus shall seal a further appropriate copy of the relevant materials as agreed with the Company Project Manager.
    It is acknowledged that the purpose of providing this data is to enable a fair adjustment to the vehicle price to be agreed between the parties and that both parties will work in good faith to agree such adjustments. The data described above is acknowledged as confidential information that is to be used for the purposes of agreeing the financial impact in Proposed Change Papers (PCP), PCP Responses, and Contract Change Notes and will be retained by Wrightbus.

44. Wrightbus and LBSL acknowledge that it is in their mutual interest to encourage innovation and product development in the performance of New Bus for London and to reduce the cost and improve the efficiency of vehicle production.

45. Wrightbus and LBSL also recognise that the Contract is a fixed price contract and therefore wish to provide incentive to both parties to identify and implement changes and / or enhancements to the specification whilst maintaining the essential characteristics of the New Bus for London design.

46. Changes to the design, manufacture or operation of the Vehicles will be dealt with as follows:

46.1. Changes Instituted by Wrightbus (including changes to the specification);

46.1.1. The benefits of increased efficiency or improved prices achieved in the supply chain that do not require a change to the Contract are to be retained by Wrightbus. Any costs to implement change shall also be met by Wrightbus.

46.1.2. The benefits of reduced costs secured from changing a component, or process, or using new / different suppliers that do not require a change to the Contract are to be retained by Wrightbus. Any costs to implement change shall also be met by Wrightbus.

46.1.3. The benefits of reduced cost secured from changing a component or process, or using new / different suppliers that are initiated by Wrightbus but require LBSL approval and / or a change to the Contract are to be shared equally through a reduction in price per Vehicle and / or lump sum payment. The price adjustment and / or a lump sum where applicable will be calculated after deducting the costs to implement the change including costs from both Wrightbus and LBSL.

46.2. Changes instituted by LBSL;

46.2.1. The benefits of reduced costs secured from a change to vehicle specification, changing a component or process, or using new / different suppliers at the request or instigation of LBSL are to be shared equally through a reduction in price per Vehicle and /or a lump sum payment. The price adjustment and / or a lump sum payment where applicable will be calculated after deducting the costs to implement the change including costs from both Wrightbus and LBSL.

46.3. Additional costs incurred from a change to vehicle specification, changing a component or process, or using new / different suppliers at the request or instigation of LBSL are to be met by LBSL through an increase in price per Vehicle and /or a lump sum payment. The price adjustment and / or a lump sum payment where applicable will be calculated after deducting the costs to implement the change.

47. Wrightbus and LBSL acknowledge that there is potential benefit to both parties from adopting a Value Engineering approach in the future and will seek to develop an appropriate approach to this. In principle it is intended to be a formal process. and will involve a cross functional team of Wrightbus and LBSL representatives with a remit to identify opportunities for cost reduction while protecting the essential characteristics and performance of the NBfL design and maintaining the Production Programme. The timing of this review is to be agreed between the Company Project Manager and the Contractor's Representative and it is anticipated that it will take place in 2014. Where this exercise identifies changes that both parties support then the benefit of reduced cost will be shared equally through a reduction in price per Vehicle and /or a lump sum payment. The price adjustment and / or a lump sum

payment where applicable will reflect the costs to implement the change including costs from both Wrightbus and LBSL.

Signed on behalf of LBSL

[redacted]

Name: Leon Daniels
Date: 4 Dec 2012

Signed on behalf of Wrightbus

[redacted]

Name: [redacted]
Date: 4 Dec. 2012